THE FIRST MEDICAL CASE IN THE PROVINCE

Before Upper Canada became a separate province, and in 1788, Lord Dorchester divided the country afterwards to be Upper Canada into four Districts, Luneburgh, Mecklenburgh, Nassau and Hesse, the chief part of whose inhabitants were in the settlements at and near Cornwall, Kingston, Niagara and Detroit respectively;—Toronto was then a trading post of no consequence.

In each District was instituted a Court of civil jurisdiction called the Court of Common Pleas: over each Court presided three judges, all laymen, but the Detroit people objected to laymen in their Court, and in 1789 William Dummer Powell, a lawyer in Montreal of Boston birth, was made first (and only) judge of that Court.

In the other Districts, however, the original scheme prevailed: in Mecklenburgh the judges were Richard Cartwright, Neil McLean and James Clark.

Before that Court in the summer of 1790 came the first medical case ever tried within the territory afterwards Upper Canada, and now Ontario.

Macauley and Markland sued James Connor, a surgeon (he is found in the United Empire list as "Surgeon, Hospital Mate") for £43 " 18s. currency ($175.60) balance of account. On March 31st, 1790, the Court sat, all three judges being present—the Sheriff returned the summons duly served—the plaintiffs filed a declaration. Dr. Connor appeared and stated "that the accounts rendered him by the plaintiffs were very inaccurate and many charges made against him which he could not agree to settle in the state it was rendered him, and that the overcharges amounted to £1 " 11 " 6 " ($6.30). Besides he claimed to have an account against Robert Macauley one of the plaintiffs for "medicines and attendance amounting to the sum of £50" ($200). He admitted in answer to a question from the Bench that the firm were not liable for a private debt of Macauley and that in any case Macauley had a private account against

him not included in the amount sued for. The Court determined that they must take time to consider the merits of the case and order the parties to appear on the first day of July.

The plaintiffs did so, but the defendant did not, and according to the practice of the Court a default was entered against him; on the 3rd however he appeared in person and had the default removed, and an order made for trial on the following Monday, July 5th.

On that day, Robert Macauley produced his private account for a box of medicine against the defendant £60 ($240), and this account was by order of the Court added to the amount demanded by the declaration. The defendant said the "said chest of medicines was not really worth sixty shillings," but admitted getting it—he produced his account against Macauley for "medicines and attendances in Cureing a broken Leg, amounting to £50." Macauley declared that "the Charge is exorbitant for the Medicine and Attendance that have been given."

Connor "alledges that his charge is not extravagant nor without a precedent and that the Cure he performed was of a dangerous Nature and that he is Justly entitled to the Amount he demands for the said Cure."

He called a witness, Mr. Joseph Forsyth, who swore that he had "heard it publickly reported in Montreal that Mr. Murray had paid Dr. Bleak Fifty pounds for Cureing a Broken Leg, which was allowed by the Court in that District" whereupon the Court did "not consider themselves Competent to Judge of the Nature of the defendants charge without Consulting the oppinion of professional men upon the Subject and do therefore call upon Jas. Latham and Jas's Gill, Surgeons, for their oppinion."

Dr. Latham said that "charges Generally depend on the Circumstances of the patient and that he had known from Two pounds to One Hundred Guineas paid for cures of this kind"; and that "considering all the circumstances in this Case "he would think himself very Honorably paid by Thirty Guineas" and would think himself entitled to charge that amount.

Dr. Gill had only attended Soldiers, but Professional men in the Province charged from Ten to Seventy Pounds according to Circumstances. he would charge at least Ten Pounds

for each Fracture for reducing it alone and for Medicine extra.

The Court took the case under consideration and on the following Thursday, July 8th, 1790, they gave judgment against the defendant for £13 " 6 " 6 currency (=$53.30) and costs. It is impossible to say how this sum was arrived at—perhaps the original bill for..... £43 " 18 " 0
was reduced by the amount claimed as reduction by defendant..... £1 " 11 " 6

to..... £42 " 6 " 6
and the defendant was allowed on the balance of his claim for Medical Service over the value of the Chest of Medicine, "not worth 60 shill." £29 " 0 " 0

leaving net balance..... £13 " 6 " 6
but this is a mere guess.

There are several matters of interest in this case which may be noted.

The personnel of the Court—three judges, not one, and these all laymen, not lawyers. Richard Cartwright came from New York State a United Empire Loyalist and became a merchant with a large business and trade connection; he was afterwards one of the members of the first Legislative Council of Upper Canada, being appointed July 16th, 1792, and was one of the two Legislative Councillors whom Simcoe charged (most unjustly) with Republican sentiments. He was the grandfather of Sir Richard Cartwright, James S. Cartwright, K.C., formerly Master in Chambers, both now deceased, and of John R. Cartwright, K.C., our efficient Deputy Attorney-General.

The other two judges were well-known residents and magistrates.

The practice was regulated by the Ordinance passed at Quebec of April 21st, 1785, 25 George III., cap. 2, as modified by the Ordinance of May 7th, 1789, 29 George III., cap. 3. Where, as in this case, the claim was for more than £10 sterling, the plaintiff drew up a declaration setting up his causes of complaint and presented it to a judge. The judge made an order which was presented to the Clerk of the Court who issued a Writ of Summons commanding the defendant to appear upon a day named. A copy of the Writ and of the

Summons was served by the Sheriff, and the defendant appearing, the matter was tried. Either party might appear in person, or by attorney, or by written and formal Power of Attorney have some other layman appear and act for him.

By the Ordinance of 1789, sec. 11, in cases in the new Districts any evidence in cases where the title to the freehold was not in question was allowable which satisfied either "the ancient or present Laws of this Province," (*i.e.*, the French Canadian Law) or "the Laws of England."

Either party might call for a jury: but unless a jury were demanded, the case was tried by the judges.

In allowing the set off or counterclaim to be set up, the Court went far beyond the limits at that time observed in English Courts: the evidence as to the amount allowed a surgeon in the Court at Montreal would not now be allowed in any British Court, being the grossest hearsay.

And in conclusion notwithstanding the increase in professional fees and the high price of living, many a medical man even now would consider £50 or £200 a pretty good fee for setting a broken leg—much more 100 guineas.

William Renwick Riddell.